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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 455

AGRICULTURAL INSURANCE COMPANY, A. L. PEIRSON INC., AMERICAN CHAIN CO. INC., et al.,

Petitioners,

against

THE UNITED STATES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners pray that a writ of certiorari issue to review an order and judgment of the United States Court of Claims entered July 12th, 1955 granting defendant's motion to dismiss the suit for want of jurisdiction.

OPINION BELOW.

The opinion of the United States Court of Claims, printed in Appendix B hereto, is reported at 132 F. Supp. 479.

Jurisdiction.

The order and judgment of the United States Court of Claims sought to be reviewed was entered July 12th, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. §1255 (1).

Questions Presented.

Whether the Court of Claims has jurisdiction of a suit to enforce the contractual obligations of the United States to pay general average contributions, as one of numerous owners of cargo carried on a privately operated general ship, or whether the Court of Claims has been ousted of jurisdiction in such cases by the Suits in Admiralty Act (46 U. S. C. §741 *et seq.*).

This question includes the following subsidiary questions:

(a) Whether the Suits in Admiralty Act affords a remedy against the United States, as owner of cargo, for contribution due in general average without regard to whether the vessel involved is owned or operated by or for the United States.

(b) Whether a Government owned vessel bareboat chartered from the United States to a private operator as owner *pro hac vice* is "owned" by the United States within the purview of the Suits in Admiralty Act.

Statutes Involved.

The statutory provisions involved are the Tucker Act (28 U. S. C .§1491), the Suits in Admiralty Act (46 U. S. C. §741, *et seq.*) set forth in Appendix A hereto.

Statement.

On December 21st, 1954 petitioners commenced suit against the United States under 28 U. S. C. §1491 in the Court of Claims. Their petition (R. 1-13) alleged in substance as follows:

Although the Steamship *Winslow Homer* was owned by the United States, at the times in question it was under demise charter from the United States to the plaintiff, Waterman Steamship Corporation, and operated by the plaintiff, Pan-Atlantic Steamship Corporation, as managing operator, in the carriage of merchandise by water for hire between the ports of New York, Philadelphia, Miami, Tampa, Panama City, Mobile and New Orleans. As thus engaged she was a general ship operated by private interests and was not under charter to the United States nor operated by or for the United States.

The United States was merely one of numerous shippers or owners of cargo loaded at New York and Philadelphia in November and December 1948 for carriage to Gulf ports of the United States. All cargo on board was carried pursuant to bills of lading issued by and on behalf of the plaintiffs Waterman Steamship Corporation and/or Pan-Atlantic Steamship Corporation. The Government cargo involved was carried under the usual Government form bills of lading which by their terms incorporated the rules and conditions governing commercial shipments made on the usual forms provided by the carrier.

During loading at Philadelphia on December 13th, 1948 a fire occurred on board the vessel which placed the entire venture in imminent and serious peril. Thereafter, as a result, extraordinary sacrifices and expenditures of a general average nature were made to extinguish the fire and

save the venture. In so doing cargo in which numerous plaintiffs were interested as shippers, owners, or insurers, was sacrificed for the benefit of all including the United States. The total of all general average losses, sacrifices and expenditures amounted to $623,326.41. The proportionate contribution in general average due to plaintiffs from the United States as owner of certain cargo amounts to $257,285.48, computed on the basis of value which the Government placed on its cargo.

This suit was brought to enforce collection of the general average contribution due from the United States pursuant to its express and implied undertakings.[1]

The Government moved to dismiss the suit in the Court of Claims on the ground that the District Courts had exclusive jurisdiction of such a suit under the Suits in Admiralty Act.

Plaintiffs contended that the Suits in Admiralty Act was inapplicable because the vessel, being under demise charter to private interests, was not a vessel owned by the Government within the purview of the Act. In addition they contended that the Suits in Admiralty Act authorized only libels on causes of action arising out of the ownership and operation of a vessel by or for the United States whereas the present suit did not arise in connection with such a vessel but only against the Government as owner of cargo. This contention is founded primarily on the

[1] On the administrative side plaintiffs' claims are still under consideration by the Department of Navy, Military Sea Transportation Service. Indeed it has recently advised that it now questions the correctness of the values which the Government originally placed on its cargo when in 1952 it furnished this information to the Average Adjusters. Although administrative consideration is still in progress, this suit was commenced shortly before the expiration of six years from the termination of the venture to preserve plaintiffs' position with respect to time for suit and was not intended to interrupt the administrative handling of their claims.

express language of Section 2 of the Act which set forth the *sine qua non* for all libels under the Act, viz: "provided that such vessel is employed, etc.". None of the decided cases has given meaning to this express provision of the Statute.

Among other things, the Government contended that the Suits in Admiralty Act affords the exclusive remedy against the United States on any cause of action which is maritime and, in any event, that the Act includes causes of action against the Government, as cargo owner, even where the vessel involved was neither owned nor operated by or for the United States.

The Court of Claims granted the Government's motion referring to decisions in cases involving Government owned and operated vessels and to some recent decisions sustaining the Government's position that the involvement of a Government vessel was not necessary in order to invoke the Suits in Admiralty Act.

Reasons for Allowance of Writ of Certiorari

1. By its decisions in this and other recent cases, the Court of Claims virtually has abdicated its jurisdiction in the whole field of maritime contracts apparently under the belief that the Suits in Admiralty Act constitutes an all-inclusive grant of jurisdiction to the District Courts of disputes arising under maritime contracts with the United States.

However, in *Calmar Steamship Corp.* v. *United States*, 345 U. S. 446, this Court admonished in a footnote: "It is not to be assumed that all claims sounding in contract can form the basis of a suit under the Public Vessels Act. * * * It is not our task, of course, to torture the Suits in

Admiralty and Public Vessels Acts into an all-inclusive grant of jurisdiction to the District Courts * * *."

In addition the Court below failed to take into account the 1953 amendment to 28 U. S. C. §1494 (Appendix A) which at least shows that the Suits in Admiralty Act grant of jurisdiction to the District Courts was not all-inclusive. This is discussed more fully, *infra*, page 10.

2. The holding below and others like it[2] interpret the Suits in Admiralty Act as applying whether or not the cause of action in question arises out of the ownership or operation of a vessel by or for the United States. Section 2 of the Act authorizes libels against the United States in the District Courts "provided that *such vessel* is employed, etc.". This proviso refers to vessels owned and operated by or for the United States and not vessels owned and operated by or for private interests. This language in the Statute is inappropriate to a libel dealing with Government cargo on a privately owned and operated vessel and hence must refer to Government cargo on a Government vessel. At any rate, there is presented here a question as to the proper construction of the Suits in Admiralty Act which constitutes an important question of federal law which has not been, but should be, settled by this Court.

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[2] In *Lykes Bros. Steamship Company* v. *United States*, 124 F. Supp. 622 (Ct. Cl. 1954) and *Waterman Steamship Corporation* v. *United States*, 124 F. Supp. 622 (Ct. Cl. 1954), it was held that the Suits in Admiralty Act applied without regard to whether or not the vessel involved was Government owned or operated. In *Prudential Steamship Corporation* v. *United States* and *States Marine Corporation* v. *United States*, 220 F. 2d 655 (2d Cir.—1955) on facts similar to those in the *Lykes* and *Waterman* cases, *supra*, the Court of Appeals for the Second Circuit held the Suits in Admiralty Act applied to the exclusion of the Tucker Act. This holding was contrary to what it had said in *Ryan Stevedoring Company* v. *United States*, 175 F. 2d 490, certiorari denied, 338 U. S. 899, and in the *Everett Fowler*, 151 F. 2d 662 (2d Cir.—1945),

The importance of this question is clear from the fact that the United States is one of the largest single overseas shippers. As such it is continuously contracting with numerous ocean carriers for the transportation of its goods and daily becomes a party to maritime ventures along with innumerable other shippers and cargo interests, all of whom have a considerable interest in knowing with certainty how their rights may be enforced against the United States when need for litigation arises.

3. The bareboat charter of the vessel from the Government to private interests, to all intents and purposes, for the time being stripped the Government of all incidents of ownership leaving it only the bare legal title. *United States* v. *Shea*, 152 U. S. 178. Hence, plaintiffs contend that the Government did not have the kind of ownership or interest in the vessel which it was the intent and purpose of the Suits in Admiralty Act to protect. This is another question involving interpretation of the Suits in Admiralty Act constituting an important question of federal law which has not been, but should be, settled by this Court.

4. The decision below and those on which the Court below relied are believed to be erroneous because they have failed to give effect to the express provision of Section 2 of the Act "provided that such vessel is employed, etc." This seems clearly to be a *sine qua non* for all libels author-

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certiorari denied, 327 U. S. 804; and *C. F. Harms Co.* v. *Erie R. Co., et al.*, 167 F. 2d 562 (2d Cir.—1948).

Although attempts were made without success in the *Lykes* and *Waterman* cases, *supra*, to obtain writs of certiorari, it is clear that the denials of certiorari do not reflect this Court's views on the questions involved for it has frequently reiterated that: "The denial of a writ of certiorari imports no express of opinion upon the merits of the case, as the bar has been told many times". *United States* v. *Carver*, 260 U. S. 482, 490.

ized by the Act. If so, no libel is authorized with respect to Government cargo unless the cause of action arose in connection with the ownership or operation of a vessel by or for the Government. Such was the tenor of the cases in the Second Circuit decided before the *Prudential Steamship Corporation* v. *United States* and *States Marine Corporation* v. *United States*, 220 F. 2d 655 (2 Cir.—1955). See *Everett Fowler*, 151 F. 2d 662 and *C. F. Harms Co.* v. *Erie R. Co., et al.*, 167 F. 2d 562. Indeed in *Ryan Stevedoring Co.* v. *United States*, 175 F. 2d 490 (2 Cir.—19), certiorari denied, 338 U. S. 899, the Court approved *American President Lines* v. *United States*, 75 F. Supp. 110 (SDNY 1947) in which it was held that:

> "Although the Suits in Admiralty Act refers to 'cargo owned or possessed by the United States', the Court is persuaded that it was intended to refer to actions concerning cargo which arose out of the operation of merchant vessels by the United States and not the type of action herein".

To be sure, in the *Prudential* and *States Marine* cases, *supra*, the Court has altered its position and removed the previous conflict between its decisions and those of the Court of Claims. However, in so doing, it failed to give effect to the express language of the Act referred to above. To ignore it was to ignore one of the cardinal rules of statutory construction. As this Court said in *Ex Parte Public National Bank*, 278 U. S. 101 at 104:

> "• • • No rule of statutory construction has been more definitely stated or more often repeated than the rule that 'significance and effect shall, if possible, be accorded to every word'. As early as in Bacon's Abridgment, Sec. 2, it was said that 'a statute ought, upon the whole, to be so construed that,

> if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant'. *Market Co.* v. *Hoffman*, 101 U. S. 112, 115. We are unable to perceive any ground for departing from that rule in the case before us. * * *."

Furthermore, this Court has held implicity to the contrary in *Alcoa Steamship Company* v. *United States*, 338 U. S. 421. That was a suit on a bill of lading for freight due on Government cargo carried by a private vessel. The District Court sustained Tucker Act jurisdiction holding that suit did not lie under the Suits in Admiralty Act (80 F. Supp. 158). The case was disposed of on other grounds in this Court but, since the record clearly disclosed that the jurisdictional point was vigorously contested below, this Court's decision on the merits seems to imply approval of the holding of the District Court on the jurisdictional point. *Chicago* v. *Millard*, 220 U. S. 413, 419.

The decision reached by the Court of Claims in this and similar cases appears to have been influenced in part by the argument of Government counsel that in referring to "Cargo" in the Act Congress intended to overcome *The Davis*, 10 Wall. 15 (1869) wherein it was held that Government cargo in the hands of third parties was not immune from arrest. However, there is not the slightest evidence that that case, decided 50 years before, was of concern or that it was even thought of when Congress was considering the Suits in Admiralty Act in 1920.

Furthermore, cargo is not something unconnected with a vessel and cannot be so considered. The Suits in Admiralty Act deals with particular vessels, i.e. those owned or operated by or for the United States. Therefore insofar as it refers to "cargo" it must refer to cargo carried on such vessels and not cargo in the abstract or cargo carried

on private vessels. Otherwise, the phrase "provided that such vessel is employed, etc." has no meaning in connection with a libel involving Government cargo.

The recent decisions of the Court of Claims and Second Circuit also are based in part on the premise that the Suits in Admiralty Act expressed a congressional policy that all litigation with the United States of a maritime nature should be relegated to the District Courts. However, this premise is clearly refuted by the amendment in 1953 to Section 1494, Title 28 U. S. Code. Previously that statute provided for jurisdiction in the Court of Claims to determine amounts due to the United States on unsettled accounts of officers, agents or "contractors" of the United States. In 1953 it was amended to provide jurisdiction in the Court of Claims to determine the amount due "to or from" the United States on unsettled accounts of "contractors", among others. The statute does not exclude maritime contractors from its provisions. Hence where other requirements of this statute are met it seems clear that as late as 1953 Congress very definitely reaffirmed that the Court of Claims should have jurisdiction in all matters of contract with the United States, which, of course, includes maritime contracts such as those here involved.

Finally, if the Court of Claims does not have jurisdiction of disputes arising under maritime contracts with the United States, such contracts have a second class status. This results from the fact that under the Tucker Act time for suit is six years whereas under the Suits in Admiralty Act it is two years. Furthermore, time for suit for general average commences to run from the termination of the venture. *United States* v. *Atlantic Mutual Insurance Company*, 298 U. S. 483. And, at least with respect to gen-

eral average, the two year suit requirement is not realistic. If the Suits in Admiralty Act affords the only judicial remedy against the United States for collection of general average, suits brought within that time invariably will be premature. More often than not it is either impractical or impossible to complete general average statements within two years, much less afford the Government time for administrative action within that time. Indeed, in the present case administrative consideration has not been completed although the general average statement was submitted to the Government eighteen months ago.

Conclusion.

For the foregoing reasons this Petition for Writ of Certiorari should be granted.

Dated, October 7th, 1955.

Respectfully submitted,

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APPENDIX A.

PERTINENT STATUTORY PROVISIONS.

TUCKER ACT.

28 U. S. C. §1491. CLAIMS AGAINST UNITED STATES GENERALLY.

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States:

(1) Founded upon the Constitution; or

(2) Founded upon any Act of Congress; or

(3) Founded upon any regulation of an executive department; or

(4) Founded upon any express or implied contract with the United States; or

(5) For liquidated or unliquidated damages in cases not sounding in tort.

* * * * * *

28 U. S. C. §1494. ACCOUNTS OF OFFICERS, AGENTS OR CONTRACTORS.

The Court of Claims shall have jurisdiction to determine the amount, if any, due to or from the United States by reason of any unsettled account of any officer or agent of, or contractor with, the United States, or a guarantor, surety or personal representative of any such officer, agent or contractor, and to render judgment thereof where—

(1) claimant or the person he represents has applied to the proper department of the Government for settlement of the account;

(2) three years have elapsed from the date of such application without settlement; and

(3) no suit upon the same has been brought by the United States.

As amended July 28, 1953, c. 253, §9, 67 Stat. 226; September 3, 1954, c. 1263, §44(c), 68 Stat. 1242.

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28 U. S. C. §1500. PENDENCY OF CLAIMS IN OTHER COURTS.

The Court of Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

• • • • • •

28 U. S. C. §2401. TIME FOR COMMENCING ACTION AGAINST UNITED STATES.

(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

• • • • • •

SUITS IN ADMIRALTY ACT.

(Act of March 9, 1920, 41 Stat. 525, Secs. 1 and 2 [46 USC, §§741 and 742])

An Act Authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock, or in the

possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel *in personam*, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this Act shall not apply to the Panama Railroad Company.

Sec. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel *in personam* may be brought against the United States or against such corporation, as the case may be, *provided that such vessel is employed* as a merchant vessel or is a tug boat operated by such corporation. * * *. (Italics supplied.)

APPENDIX B.

Opinion Below.

Per curiam: Plaintiff and one hundred forty-four other plaintiffs sue for general average contribution from the United States for the expense of extinguishing a fire on the SS. *Winslow Homer* on which defendant, with others, had shipped certain goods.

Defendant defends on the ground that the district courts have exclusive jurisdiction for such a cause of action under the Suits in Admiralty Act, as amended (46 U. S. C. 741-749, 781-790).

Defendant is clearly right. *Matson Navigation Co.* v. *United States,* 284 U. S. 352; *Johnson* v. *Fleet Corp.,* 280 U. S. 320; *Calmar SS. Corp.* v. *United States,* 345 U. S. 446, 455; *M. & J. Tracy, Inc.* v. *United States,* 125 C. Cls. 70, 75, cert. den. 346 U. S. 854; *Field* v. *United States,* 125 C. Cls. 559, 561, cert. den. 347 U. S. 922; *Atlantic Coast Line Railroad Co.* v. *United States,* 128 C. Cls. 747, cert. den. 348 U. S. 872; *Lykes Bros. SS. Co., et al.* v. *United States,* 129 C. Cls. 455, cert. den. 348 U. S. 971; *Waterman SS. Corp.* v. *United States,* 129 C. Cls. 460, cert. den. 348 U. S. 971; *States Marine Corp.* v. *United States,* 220 F. 2d 655.

Defendant's motion to dismiss is granted, and plaintiffs' petition is dismissed.

It is so ordered.